

PUBLIC EMPLOYMENT RELATIONS (EXCERPT)

Act 336 of 1947

423.210 Prohibited conduct by public employer or officer or agent; prohibited conduct by labor organization; verification by independent examiner; declaration identifying local bargaining units; sharing of financial support of bargaining representative; effectiveness; appropriation.

Sec. 10. (1) A public employer or an officer or agent of a public employer shall not do any of the following:

(a) Interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed in section 9.

(b) Initiate, create, dominate, contribute to, or interfere with the formation or administration of a labor organization. A public employer may allow employees to confer with a labor organization during working hours without loss of time or pay.

(c) Discriminate in regard to hiring, terms, or other conditions of employment to encourage or discourage membership in a labor organization. However, this act or any other law of this state does not preclude a public employer from making an agreement with an exclusive bargaining representative as described in section 11 to require as a condition of employment that all other employees in the bargaining unit pay to the exclusive bargaining representative a service fee equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative.

(d) Discriminate against a public employee because the public employee has given testimony or instituted proceedings under this act.

(e) Refuse to bargain collectively with the representatives of its public employees, subject to section 11.

(2) It is the purpose of 1973 PA 25 to reaffirm the continuing public policy of this state that the stability and effectiveness of labor relations in the public sector require, if the requirement is negotiated with the public employer, that all other employees in the bargaining unit share fairly in the financial support of their exclusive bargaining representative by paying to the exclusive bargaining representative a service fee that may be equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative.

(3) A labor organization or its agents shall not do any of the following:

(a) Restrain or coerce public employees in the exercise of the rights guaranteed in section 9. This subdivision does not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership.

(b) Restrain or coerce a public employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances.

(c) Cause or attempt to cause a public employer to discriminate against a public employee in violation of subsection (1)(c).

(d) Refuse to bargain collectively with a public employer, if it is the representative of the public employer's employees, subject to section 11.

(4) By July 1 of each year, each exclusive bargaining representative that represents public employees in this state shall have an independent examiner verify the exclusive bargaining representative's calculation of all expenditures attributed to the costs of collective bargaining, contract administration, and grievance adjustment during the prior calendar year and shall file that verification with the commission. The commission shall make the exclusive bargaining representative's calculations available to the public on the commission's website. The exclusive bargaining representative shall also file a declaration identifying the local bargaining units that are represented. Local bargaining units identified in the declaration filed by the exclusive bargaining representative are not required to file a separate calculation of all expenditures attributed to the costs of collective bargaining, contract administration, and grievance adjustment.

(5) A public employer and a bargaining representative may enter into a collective bargaining agreement that requires all public employees in the bargaining unit to share equally in the financial support of the bargaining representative. This act does not, and a law or policy of a local government must not, prohibit or limit an agreement that requires public employees in the bargaining unit, as a condition of continued employment, to pay to the bargaining representative membership dues or service fees. This subsection becomes effective immediately upon, and applies to the extent permitted by, either of the following:

(a) A decision or ruling by the United States Supreme Court that reverses or limits, in whole or in part, *Janus v AFSCME, Council 31*, ___US___; 138 S Ct 2448 (2018).

(b) The ratification of an amendment to the United States Constitution that restores the ability to require, as a condition of employment, a public employee who is not a member of a bargaining representative to pay,

under any circumstances, fees, including agency fees, to the bargaining representative.

(6) For fiscal year 2022-2023, \$1,000,000.00 is appropriated to the department of labor and economic opportunity to be expended to do all of the following regarding the 2023 amendatory act that added this sentence:

- (a) Respond to public inquiries regarding the amendatory act.
- (b) Provide the commission with sufficient staff and other resources to implement the amendatory act.
- (c) Inform public employers, public employees, and bargaining representatives about changes to their rights and responsibilities under the amendatory act.
- (d) Any other purposes that the director of the department of labor and economic opportunity determines in the director's sole discretion are necessary to implement the amendatory act.

History: Add. 1965, Act 379, Imd. Eff. July 23, 1965;—Am. 1973, Act 25, Imd. Eff. June 14, 1973;—Am. 2012, Act 53, Imd. Eff. Mar. 16, 2012;—Am. 2012, Act 349, Eff. Mar. 28, 2013;—Am. 2014, Act 414, Imd. Eff. Dec. 30, 2014;—Am. 2023, Act 9, Eff. Feb. 13, 2024;—Am. 2023, Act 114, Eff. Feb. 13, 2024.

Constitutionality: In Lehnert v Ferris Faculty Association, 500 US 507; 111 S Ct 1500; 114 L Ed 2d 572 (1991), the United States Supreme Court held that a collective-bargaining unit constitutionally may compel its employees to subsidize only certain union activities. "[I]n determining which activities a union constitutionally may charge to dissenting employees ... chargeable activities must (1) be 'germane' to collective-bargaining activity; (2) be justified by the government's vital policy interest in labor peace and avoiding 'free riders'; and (3) not significantly add to the burdening of free speech that is inherent in the allowance of an agency or union shop."

Ruling on the respondent union's disputed activities, the Court held:

(1) The respondent may not charge the funds of objecting employees for a program designed to secure funds for Michigan public education or for that portion of a union publication that reports on those activities. The Court found none of the activities "to be oriented toward the ratification or implementation of petitioner's collective-bargaining agreement."

(2) The respondent may bill dissenting employees for their share of general collective-bargaining costs of the state or national parent union. The district court had found these costs to be germane to collective bargaining and similar support services; the court agreed with the finding.

(3) The respondent may not charge for the expenses of litigation that does not concern the dissenting employees' bargaining unit or, by extension, union literature reporting on such activities. The Court found extra-unit litigation to be proscribed by the First Amendment of the United States Constitution because it is "more akin to lobbying in both kind and effect" and not germane to a union's activities as an exclusive bargaining agent.

(4) The respondent may not bill for certain public relations activities. The Court states: "[T]he ... activities ... entailed speech of a political nature in a public forum. More important, public speech in support of the teaching profession generally is not sufficiently related to the union's collective-bargaining functions to justify compelling dissenting employees to support it. Expression of this kind extends beyond the negotiation and grievance-resolution contexts and imposes a substantially greater burden upon First Amendment rights"

(5) The respondent may charge for those portions of a union publication that concern teaching and education generally, professional development, unemployment, job opportunities, union award programs, and miscellaneous matters. The Court noted that such informational support services are neither political nor public in nature and that expenditures for them benefit all, without additional infringements upon the First Amendment.

(6) The respondent may bill for fees to send delegates to state and national affiliated conventions. The Court found that participation by local members in the formal activities of the parent is an important benefit of affiliation and an essential part of a union's discharge of its duties as a bargaining agent.

(7) The respondent may charge expenses incidental to preparation for a strike which, had it occurred, would have been illegal under Michigan law. The Court, noting that the Michigan Legislature had imposed no restriction, stated there was no First Amendment limitation on such charges. The Court added that such expenses are "substantively indistinguishable from those appurtenant to collective-bargaining negotiations ... enure to the direct benefit of members of the dissenters' unit ... and impose no additional burden upon First Amendment rights."

Compiler's note: Enacting section 1 of Act 349 of 2012 provides:

"Enacting section 1. If any part or parts of this act are found to be in conflict with the state constitution of 1963, the United States constitution, or federal law, this act shall be implemented to the maximum extent that the state constitution of 1963, the United States constitution, and federal law permit. Any provision held invalid or inoperative shall be severable from the remaining portions of this act."

Enacting section 1 of Act 414 of 2014 provides:

"Enacting section 1. If any part or parts of this act are found to be in conflict with the state constitution of 1963, the United States constitution, or federal law, this act shall be implemented to the maximum extent that the state constitution of 1963, the United States constitution, and federal law permit. Any provision held invalid or inoperable shall be severable from the remaining portions of this act."

Popular name: Public Employment Relations